IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL REVISION APPLICATION NO. 36 OF 2003.

Shri Hrishikesh Mishra,
Plot No. 98/1349,
Sarala Nagar,
Laxminagar,
Bhubaneshwar-6,
Orissa. ... Applicant.

Versus

State through Public
Prosecutor. ... Respondent.

Mr. S.G. Bhobe, Advocate for the Applicant.

Mr. S.N. Sardessai, Public Prosecutor for the Respondent/State.

Coram : P.V. HARDAS, J.

Date : 18th September 2003.

ORAL JUDGMENT.

This Criminal Revision Application has been filed by the applicant/accused assailing the Order, dated 11th July 2003, passed by the Chief Judicial Magistrate, Panaji, in Criminal Case No. 53/98/A, dismissing the application for discharge, filed by the applicant.

2. The facts in brief, as are germane for the decision of this Criminal Revision Application, are set out hereunder:-

The Accounts Branch of the Office of the Inspector General of Police, Panaji, received a bill for an amount of Rs. 3,595/- from the applicant/accused

towards publishing of an advertisement in his daily newspaper "Kalinga Bharati". The said bill was processed and ultimately paid to the applicant/accused. On re-verification, it was found that no release for printing and publishing of the said advertisement had been issued in favour of the applicant/accused. The applicant/accused was, accordingly, arrested for an offence punishable under Section 420 of the Indian Penal Code.

3. The statement of Vishnu Shetkar son of Tanaji Shetkar reveals that, on 11th March 1997, Mrs. Maria A. Fernandes, an Upper Division Clerk, had submitted two advertisement bills, one of "Kalinga Bharati" and the second of daily "Gomantak", for Rs. 3,595/- and Rs. 720/- respectively. He had, accordingly, recommended the bills for payment. The statement of Mrs. Maria Anita Fernandes reveals that, in the month of January 1997, she had received a bill from "Kalinga Bharati" daily newspaper alongwith a xerox copy of the advertisement published in the said daily newspaper. The amount of the bill was Rs. 3,595/-. Since no fund was available in the month of January, the bill was kept pending and was later processed in the month of March 1997. The bill was settled and the same was forwarded to the Cashier. From their statements it is further revealed that a Circular was received in the month of

July 1997, instructing all the Heads of Department to submit details of bills where payment had been made to "Kalinga Bharati". On verification, it was found that payment of Rs. 3,595/- had been made, though no release for publishing the said advertisement had been issued in favour of the applicant/accused.

4. The applicant/accused came to be arrested on 25th August 1997. Prior to that, the applicant/accused had addressed a letter, dated 21st August 1997, which was received by the Superintendent of Police, North Goa, on 22nd August 1997. The said letter has been enclosed in the charge-sheet submitted against the present applicant. In the said letter, the applicant/accused had stated that he had published the advertisement and, since the advertisement had actually been published, bills were raised for reimbursement and post facto approval. In the said letter, it is further stated that he came to know that the Government of Goa does not give post facto approval for the advertisement, therefore, he had returned the payment of Rs. 3,595/-, which he had received in pursuance to his bill. Thus, the complainant, who was made to pay Rs. 3,595/- as charges for the advertisement, which was published, has been reimbursed by the applicant/accused prior to his arrest.

5. The learned trial Court, in paragraph 10 of

the Order, had come to the conclusion that "the accused on account of his advertisement has induced the complainant to part with the money". It is true that the accused had published the said advertisement, though he was not called upon to publish the same. However, having published the advertisement, the accused had sent a xerox copy of the advertisement and had raised his bill. The Department has been negligent in sanctioning the said amount to the accused without proper verification. Be that as it may, there does not appear to be any dishonest intention on the part of the accused in raising the bill. Nor can it be said that there was inducement offered to the complainant to part with the money. Undisputedly the applicant was not authorised to publish the said advertisement in the newspaper and had the Department refused to pay the bill, the applicant would not have any legitimate grievance regarding the non-payment. However, the Department having paid the amount, not on the basis of any false representation made by the applicant, but because of the negligence of the staff in not verifying whether the applicant/accused was authorised to publish the advertisement, cannot now turn around and state that they have been cheated and dishonestly induced to part with the money. It is undisputed also that prior to his arrest, the applicant/accused had refunded the said amount of Rs. 3,595/- to the Department. The fact that the

applicant/accused had no dishonest intention is borne out from the letter, which was received by the Department on 22nd August 1997. In the said letter, the applicant/accused had stated that by sending the bill he was seeking for post facto approval for the advertisement and, since no post facto approval was granted, he returned the amount of Rs. 3,595/- to the Department.

6. In the backdrop of the facts, in my considered opinion, therefore, no ingredients in respect of the offence punishable under Section 420 of the Indian Penal Code, are disclosed. The applicant/accused is, thus, entitled to be discharged as no prima facie case is established against him.

7. In the result, therefore, Criminal Revision Application is allowed. The Order impugned is, hereby, quashed and set aside and the applicant is discharged from Criminal Case No. 53/98/A.

(P.V. HARDAS)
JUDGE.

ed's.